

Spelthorne Borough Council

GAMBLING ACT 2005

RULES AND PROCEDURE FOR LICENSING SUB-COMMITTEES HEARING A PREMISES APPLICATION

1. General

- 1.1 These rules and procedure are subject to the provisions of the Gaming Act 2005 (the 'Act') and the Gambling Act 2005 – Hearings Regulations SI 2007 / 173 (August 2007).

2. Composition of Sub-Committee

- 2.1 The Sub-Committee will comprise three members. All three members must be present to enable the hearing to proceed and be valid. One member will act as Chairman.

3. Notice of hearing

- 3.1 The licensing authority will send you a notice stating the date, time and place at which the hearing is to be held (the 'notice of hearing').
- 3.2 You will also be sent information regarding the following: -
- (a) your rights, as provided for in paragraphs 4.1 & 8.6 below;
 - (b) the relevant period of time within which you must give the notice described in paragraph 4.2 below (notice of your attendance and representation);
 - (c) the consequences if you do not attend or are not represented at the hearing, as described in paragraphs 11.1 to 11.3 below;
 - (d) the procedure to be followed at the hearing, paragraphs 8.1 to 8.16 below;
 - (e) any particular points on which the licensing authority considers that it will want clarification at the hearing.

4. Right of attendance, assistance and representation

- 4.1 Subject to paragraphs 6.2 & 6.4 below, you may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.
- 4.2 On receipt of the notice of hearing and within the period of time specified, you must notify the licensing authority: -
- (a) whether you intend to attend or be represented at the hearing;
 - (b) whether you consider a hearing to be unnecessary.
- 4.3 Where you wish any additional person (other than the person you intend to represent you at the hearing) to appear at the hearing, you must include a request for their attendance in the notification referred to in paragraph 4.2 above and give the name of that person and a brief description of the point(s)

they wish to make to help the authority in relation to your application, representations or notice.

- 4.4 If you wish to withdraw any representations you have made, you may do so -
- by giving notice to the Licensing Manager no later than 24 hours before the day or first day on which the hearing is to be held; or
 - communicating this at or before the start of the hearing.

5. Right to dispense with hearing if everyone agrees

- 5.1 The licensing authority may dispense with a hearing if everyone (the applicant, representees and any person giving notice) agrees that such a hearing is unnecessary and has given such notice to the authority.
- 5.2 Where it has been agreed that a hearing is unnecessary the Licensing Authority will immediately give notice to everyone that the hearing has been dispensed with.

6. Hearing to be in public

- 6.1 Subject to the following paragraph, the hearing will take place in public.
- 6.2 The Sub-Committee may ask the press and public to leave the hearing at any time, for all or part of the hearing, where it considers that it is necessary in all the circumstances having regard to:
- (a) any unfairness to a party that is likely to result from a hearing in public; and
 - (b) the need to protect as far as possible, the commercial or other legitimate interests of a party.
- 6.3 For the purposes of the above paragraph, you and any person assisting or representing you may be treated as a member of the public.
- 6.4 The Sub-Committee may require any person attending the hearing who is in their opinion behaving in a disruptive manner to leave the hearing and may: –
- (a) refuse to permit that person to return, or
 - (b) specify conditions under which they may return

but such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

7. Report

- 7.1 A report will be put before the Sub-Committee, prepared by the Licensing Manager.
- 7.2 The Licensing Manager will send a copy of the report to everyone (the applicant, representees and any person giving notice) in advance of the hearing.

8. Procedure at hearing

- 8.1 A hearing will take the form of a discussion managed by the Sub-Committee through the Chairman and cross examination will not be allowed unless the Sub-Committee considers that cross examination is required for it to understand the intention of the application or notice and the nature of the representations made.
- 8.2 The order of business will be at the discretion of the Sub-Committee, but will normally proceed in accordance with the following paragraphs.
- 8.3 At the beginning of the hearing the Chairman will: -
 - Introduce the members of the Sub-Committee who will make the decision, and the officers assisting them with the hearing process,
 - invite everyone else to identify themselves to the Chairman so that we can check their attendance against the previous notices submitted,
 - explain to everyone the procedure that the Sub-Committee intends to follow for the hearing.
- 8.4 The Sub-Committee will then consider any requests for permission for another person to appear at the hearing (paragraph 4.3 above). Whilst permission will not be unreasonably withheld, the Sub-Committee will need to be convinced of their relevance to the hearing (see paragraph 8.7).
- 8.5 The Chairman may ask the Licensing Manager/Enforcement Officer to introduce the application, and briefly outline the matter which the Sub-Committee is being asked to decide. Alternatively, the Chairman may, if he is happy the report is self-explanatory, proceed directly to the next paragraph.
- 8.6 You will normally be invited to address the Sub-Committee in the following order: -
 - Applicant;
 - Responsible Authorities;
 - Interested Parties.
- 8.7 You will be entitled to: -
 - give further information in support of your application, representations or notice (as applicable) in response to a point upon which the licensing authority has given notice that it will want clarification under paragraph 3.2(e);
 - question any other party if given permission by the Sub-Committee;
 - address the Sub-Committee.
- 8.8 Members of the Sub-Committee may ask you, or anybody else appearing at the hearing, questions.
- 8.9 Where there is more than one representation on similar grounds, the Sub-Committee may request that only one person address them on behalf of all those who have made similar representations.
- 8.10 In considering your application, representations or notice, the Sub-Committee may take into account documentary or other information produced by you in support of your application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

(But only where it is demonstrated to the Sub-Committee that such information could not have been provided in advance). The decision of the Sub-Committee will be final.

- 8.11 The Sub-Committee will disregard any information given or evidence produced at the hearing which is not relevant to: –
- (a) your application, representations or notice (as applicable);
 - (b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.
- 8.12 The Sub-Committee may admit hearsay evidence, but consideration will always be given to the weight, if any, to be attached to such evidence, depending upon the circumstances in which it arises.
- 8.13 You are entitled to make a closing submission which will be heard in the following order: -
- Interested Parties;
 - Responsible Authorities;
 - Applicant.
- 8.14 All parties will be allowed an equal maximum period of time in exercise of the rights set out in paragraphs 8.7 & 8.13 above. The Sub-Committee will determine this maximum period of time after consultation with parties.
- 8.15 After the closing submissions the Sub-Committee may withdraw from the room to make their deliberations in private.
- 8.16 The legal adviser and a Committee Manager will accompany the Sub-Committee when it retires to make its deliberations but they will not take part in the decision making process.

9. Role of Legal Adviser

- 9.1 The Sub-Committee may seek advice or clarification of any procedural, technical or legal matter from the legal adviser at any time during the course of the hearing.
- 9.2 The legal adviser may intervene at any time during the course of the hearing to advise on any procedural, technical or legal matter.
- 9.3 Any advice given by the legal adviser to members of the Sub-Committee in private will be provisional until the detail of that advice has been repeated in open session and the parties have had an opportunity to comment on it. The legal adviser will then state in open session whether the advice is confirmed or varied (and if it is varied, in what way) before members act upon it.

10. Determination of applications

- 10.1 The Sub-Committee will give its decision at the conclusion of the hearing or otherwise within 5 working days.

11. Failure of parties to attend the hearing

- 11.1 If you have informed the licensing authority that you do not intend to attend or be represented at the hearing, the hearing may proceed in your absence.
- 11.2 If you fail to attend or be represented and have not given notice the Sub-Committee may: -
- adjourn the hearing to a specified date where it considers it to be necessary in the public interest, or
 - hold the hearing in your absence
- 11.3 Where a hearing is held in your absence, the Sub-Committee will consider your application, representations or notice at the hearing but the weight, if any, to be attached to these will take into account the fact that such information is not open to further, more detailed examination.

12. Adjournments

- 12.1 the Sub-Committee may adjourn the hearing to a specified date or dates for the following reasons: -
- (a) in accordance with paragraph 11.2 above;
 - (b) to enable it to consider any information or documents provided by any party in response to a notice or at the hearing;
 - (c) having regard to the ability of any party, person representing a party or witness to attend the hearing;
 - (d) a member of the Sub-Committee is taken ill;
 - (e) in accordance with the Council's Standing Orders, the Sub-Committee having sat for 3 hours, the meeting will stand adjourned.
(However, it may resolve to continue the meeting but before doing so will seek the views of everyone in attendance.)
- 12.2 Where the Sub-Committee adjourns the hearing to a specified date or dates it will immediately notify the parties of the date(s), time(s) and place(s) to which the hearing has been adjourned.

13. Record of proceedings

- 13.1 A written record of the hearing will be kept for 6 years from the date of the decision of the Sub-Committee or, where an appeal is brought against that decision, the decision of the Court hearing the appeal.

14. Waiver of rules

- 14.1 Except where prescribed by the regulations, the Sub-Committee may in any particular case dispense with or modify these rules.
- 14.2 The licensing authority may extend a time limit provided for in the regulations for a specified period where it considers this to be necessary in the public interest.
- 14.3 Where the licensing authority has extended a time limit it will immediately give you notice, stating the period of time of the extension and the reasons for it.

NOTES

Human Rights

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a convention right.

The Sub-Committee will have regard to the Human Rights Act when exercising its licensing functions, with particular reference to the following provisions: -

- Article 1 of the first protocol states that every person is entitled to the peaceful enjoyment of his/her possessions and the Licensing Authority, when taking into account this right will strike a fair balance between the applicant's interest and the interests of the public.
- Article 6 relates to the determination of civil rights and obligations and states everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It is established that holding a Licence is a civil right within the meaning of Article 6 and therefore any hearing to determine licence applications, variations, renewals or revocations would need to comply with the safeguards of the convention. The Council's hearings will be conducted fairly in accordance with the rules of natural justice and as applicants have a full right of appeal to an independent tribunal against any decision made by the Licensing Authority, the requirements of Article 6 will have been complied with.

- Article 8 states that
 - (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
 - (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Like Article 1, the Licensing Authority, when considering this right must strike a fair balance between the applicant's interest and the interests of the public.